

## APPENDIX B

### FCPA CIVIL ENFORCEMENT ACTIONS BY THE U.S. SECURITIES & EXCHANGE COMMISSION

#### *SEC v. Katy Industries, Inc.*

In 1978, the SEC alleged that Katy Industries, a U.S. company, obtained an oil production sharing contract in Indonesia by making payments to a high level Indonesian government official. As alleged in the complaint, Katy employed a consultant who was a close friend of the official and retained a representative of the official as an agent for Katy. Katy then made payments of \$250,000 to a Cayman Island corporation owned by the consultant and the representative knowing that the official would directly or indirectly share in the payments. The company and several of its officers, without admitting or denying the allegations, entered into a consent judgment that enjoined them from violating various provisions of the securities laws, including the anti-bribery provisions of the FCPA.

#### *SEC v. Sam P. Wallace Co.*

In 1981, the SEC alleged that Sam P. Wallace Co. and two of its officers (1981) “made payments . . . totaling at least \$1.391 million to a certain foreign official to aid Wallace in procuring and maintaining certain contracts and billings with a certain foreign government.” In a related criminal prosecution, to which the company and one officer pled guilty, the criminal information disclosed that the payments were to the chairman of the Trinidad and Tobago Racing Authority to obtain and retain a contract to construct portions of a racetrack. With respect to the SEC action, the company consented to the entry of an injunction prohibiting future violations of the FCPA.

#### *SEC v. Ashland Oil, Inc.*

In 1986, the SEC alleged that Ashland Oil purchased a nearly worthless chromite mine owned by a foreign official for approximately \$25,000,000 to obtain crude oil contracts with Oman Refining Company, an instrumentality of the Omani government. Ashland Oil and its chairman consented to the entry of a permanent injunction prohibiting Ashland Oil from using corporate funds for unlawful political contributions or other unlawful purposes.

#### *SEC v. Montedison, SpA.*

In 1996, the SEC alleged that Montedison, an Italian industrial conglomerate whose securities (in the form of American Depositary Receipts) are traded in the US, disguised hundreds of millions of dollars in payments that, among other things, were used to bribe politicians in Italy and other persons. The fraudulent conduct was disclosed only after new management was appointed when Montedison disclosed it was unable to service its bank debt. Virtually all of the former senior management at Montedison responsible for the fraud were convicted by Italian criminal authorities and were sued by the company. The Commission charged Montedison with committing fraud, and with violating the books and records and internal accounting controls provisions of the FCPA. All of the allegedly violative conduct occurred outside of the US. Five years after the case was filed, and after a change in corporate control at Montedison, the company settled with the SEC by consenting to pay a \$300,000 civil penalty.

#### *SEC v. Triton Energy.*

In February 1997, the SEC alleged that a subsidiary of Triton Energy Corporation, a US-domiciled public company, acting through the officers of a subsidiary, Triton Indonesia, made approximately \$450,000 in payments to an intermediary for the purpose of obtaining favorable treatment of a royalty agreement by Indonesian tax authorities. The illegal payments were falsely recorded on the subsidiary's records as for the purchase of services from the intermediary. Triton's liability apparently was premised not on direct participation in the wrongdoing, but in the parent company's failure to take adequate steps to prevent illicit foreign payments after certain warning signs came to the attention of management. Triton was enjoined from future violations of the books and records and internal accounting controls provisions and fined \$300,000. Two former officers of the subsidiary were enjoined from violating the anti-bribery provisions and fined \$50,000 and \$35,000 respectively. The SEC issued administrative orders prohibiting future misconduct against four additional employees in connection with the improper payments and the mis-bookings.

*In re IBM, Inc.*

In December 2000, the SEC filed a settled administrative action against IBM, arising from a contract awarded to its wholly owned subsidiary, IBM-Argentina, to modernize and fully integrate the computer systems of a government owned bank, Banco de la Nacion Argentina ("BNA"). In connection with this contract IBM-Argentina's senior management circumvented IBM's established procurement review procedures and caused IBM-Argentina to enter into a \$22 million subcontract with a local company. Approximately \$4.5 million of that amount was subsequently diverted to certain BNA officials. The entire \$22 million was inaccurately recorded in IBM's books and records as legitimate subcontractor expenses. In resolving the matter, the SEC found that IBM violated the books and records provisions, and was ordered to pay a \$300,000 civil penalty.

*In re American Bank Note Holographics, Inc (ABNH).*

In July 2001, the SEC filed a settled action against ABNH. The bulk of the action related to a long-standing financial fraud conducted by former management of ABNH. In the course of conducting an internal investigation into financial irregularities, new management discovered that \$239,000 had been paid to a Swiss bank account for the purpose of influencing the acts or decisions of Saudi Arabian government officials. The SEC alleged that the payments were falsely recorded in the company's records as consulting fees. The results of the internal investigation, including the illicit payment, were promptly reported to the SEC staff. ABNH consented to the entry of an administrative order finding that it violated the anti-bribery section of the FCPA, and ordering it to pay a \$75,000 civil penalty. ABNH settled with the Commission, agreeing to entry of an order finding that it violated Section 30A of the Exchange Act and ordering it to cease-and-desist from further violations of that provision. ABNH also consented to pay a \$75,000 penalty in a separate federal court action relating specifically to ABNH's violation of Section 30A of the Exchange Act. At the same time, the Department of Justice announced criminal actions against former officers of ABNH, charging violations of the anti-bribery provisions, among other things.

*In re Baker Hughes, Inc.*

On September 12, 2001, the SEC announced the filing of actions related to the alleged payment of \$75,000 by employees of Baker Hughes Inc. for the purpose of influencing an Indonesian tax official responsible for reviewing a Baker Hughes tax assessment. The SEC alleged that the chief financial officer and controller of Baker Hughes made a payment of \$75,000 to KPMG with knowledge that it was intended for an Indonesian tax official reviewing a Baker Hughes tax assessment. The entire payment was inaccurately recorded in Baker Hughes' books, records and accounts as a payment for professional services. In apparent recognition of the fact that Baker Hughes uncovered the illicit payment, took strong corrective action, reported the incident to the staff, and cooperated fully with the staff's investigation, the SEC, in a cease and desist order, found that Baker Hughes violated the books and records and internal accounting controls provisions. The SEC also filed the first-ever joint civil action against Baker Hughes' Indonesian accounting firm, KPMG Siddharta Siddharta & Harsono, and a local partner at that firm for participating in the alleged bribery scheme. The SEC is litigating charges against two former Baker Hughes officials.

*In re Chiquita Brands International, Inc.*

On October 3, 2001 the SEC issued a settled cease-and-desist order against Chiquita Brands International, Inc. in which the SEC found that Chiquita violated the books and records and internal accounting controls provisions of the federal securities laws in connection with a payment to foreign customs officials by a wholly-owned foreign subsidiary of Chiquita. Chiquita also agreed to pay a \$100,000 civil penalty. The order found that Chiquita violated the books and records and internal controls provisions as a result of the conduct of its Colombian subsidiary, Banadex. According to the order, without the knowledge or consent of any Chiquita employees outside Columbia and in contravention of Chiquita's policies, employees of Banadex authorized the payment of the equivalent of \$30,000 to local customs officials to secure renewal of a license at Banadex's Turbo, Columbia port facility. The subsidiary's books and records incorrectly identified the two installment payments, which were made in 1996 and 1997. In 1997, Chiquita's internal audit staff discovered the payment during an audit review and, after an internal investigation, Chiquita took corrective action which included terminating the responsible Banadex employees and reinforcing internal controls at Banadex.